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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SANDERSON, JOSEPH W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,632	Applicant(s) HILLFORTH, MIKAEL	
	Examiner Joseph W. Sanderson	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,9,10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,9,10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 17 and 18 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims merely re-recite limitations of claim 1.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 4-6, 9, 10 and 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "normal size" in claim 1 is a relative term which renders the claim indefinite. The term "normal size" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Since the device is "applicable to animals such as cows, sheep, goats, horses, buffaloes, etc.," it is unclear as to what distance the sensors would be placed to be equal to a "normal [animal] size".

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Claim 14 is dependent on a rejected claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6, 9, 10 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt (US 5 673 647) in view of Frey et al. (EP 0 561 071).

Regarding claims 1, 17 and 18:

Pratt discloses an apparatus for detecting an animal having a body part and a head part (abstract; cattle), comprising: an animal passage extending in a transport direction, said passage being defined by a first enclosure member and a second enclosure member (Fig 11A), which members are arranged on a respective side of the passage and extend substantially in parallel to said transport direction, and a sensor device which is arranged to sense the animal in the passage (Figs 20A and 20B; col 33, lines 48-67), characterized in that wherein the sensor device is arranged to sense a parameter regarding measurements (col 6, lines 38 and 62) at a determined position in the passage.

Pratt discloses measuring dimensions of each animal via a sensor arranged at a determined position in the passage and the sensor device is arranged to produce a signal when

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the parameter indicates that the width of the animal is less than a predetermined value at the predetermined position (col 7, lines 30-35 teaches that based on the size of the animal it is categorized and ends up in different pens so the signal produced by the sensor device is that the animal ends up in a particular pen; col 44, line 40, applicant has not claimed the condition or what type of signal and Pratt teaches a visual signal by sorting into various lots based on where the animal falls in relation to a predetermined parameter e.g. weight, size, ownership, etc).

Pratt discloses a controlling processor (abstract; computer system), but does not explicitly disclose that the parameter is related to the width of the animal and the control member being arranged to count the animals passing the animal passage in response to the sensing of the sensor device.

Frey teaches that sensor devices arranged in a passage and arranged to sense a dimension parameter seen in a determined direction and to produce a signal when the parameter indicates that the dimension is less than a predetermined value is old and notoriously well-known. Frey teaches it is notoriously well-known to utilize a control member connected to the sensor device, the control member being arranged to count in response to the sensing of the sensor device. (abstract; page 2, lines 11 and 51; page 4, line 26; Fig.8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Pratt with the teachings of Frey as a management measure to obtain accurate information relating to the flow as taught by Frey (Frey, page 4, lines 13-14). The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results. Although Frey teaches measuring the height it would have been obvious to one of ordinary skill in the art to further modify the teachings at the time of

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the invention by measuring width since it is "obvious to try" choosing from a finite number of identified, predictable solutions with a reasonable" expectation of success, and since width is merely the height in a horizontal direction.

Pratt as modified renders the sensor device comprising at least a first sensor and a second sensor, wherein the first sensor is arranged to sense the presence of the animal at a first point of the passage and wherein the second sensor is arranged to sense the presence of the animal at a second point of the passage (Fig 11A, 384, 386 and 388).

Pratt as modified appears to render the first point and the second point both located at the determined position with regard to the transport direction but spaced apart from each other with a distance, wherein said distance is larger than the width of the head part, but is silent on the width being smaller than the width of the body part of an animal of a normal size to be guided through the animal passage, but is silent on explicitly teaching the spacing. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely a shift in location of a known element performing in the same intended function in a more confined space [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding claims 4 and 5:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders measuring, wherein the determined direction is a substantially vertical direction; determined direction is a substantially vertically downward direction (Frey, page 5, lines 56-58).

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Regarding claim 6:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the determined direction as a substantially horizontal direction due to the modification to sense width, which is a horizontal measurement.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the first point located in the proximity of the first enclosure member whereas the second point is located in the proximity of the second enclosure member (Figs 11A and 12A).

Regarding claim 10:

The discussion above regarding claim 1 is relied upon.

Pratt as modified does not render the first sensor and the second sensor both provided above the passage to sense the animal passing below the respective first and second sensors. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely shifting the location of a known elements performing the same intended function for an efficient use of space, to prevent damage caused by the animal kicking and for more accurate sensing [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

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Regarding Claims 13-16, 19 and 20:

The discussion above regarding claims 1, 4 and 9 is relied upon.

Pratt as modified renders a gate device (Figs 2 and 5) arranged in the passage to take one of an open position and a closed position.

Response to Arguments

6. Applicant's arguments filed 17 April 2009 have been fully considered but they are not persuasive.

Applicant's arguments on pages 9-11 fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The mere recitation of case law without application to the claims does not indicate the language considered patentable.

In response to applicant's arguments against the Frey individually (page 11), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Frey is used to teach the concept of a sensor which counts the people/animals walking by the sensor, while Pratt is relied upon for the "predetermined" threshold.

In response to applicant's argument that the claimed sensor spacing does not yield predictable results (page 12), the applicant fails to delineate any reasoning or evidence to such

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effect. The examiner further asserts that the rearrangement of the sensors would not impede their sensing functions, thus yielding the predictable result of sensing via a new orientation.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art Unit 3644

/J. W. S./
Examiner, Art Unit 3644